

party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a Statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial review.* The respondent may seek judicial review of HUD's decision pursuant to section 111(c) of the Act.

§ 570.497 Condition of State election to administer State CDBG Program.

Pursuant to section 106(d)(2)(A)(i) of the Act, a State has the right to elect, in such manner and at such time as the Secretary may prescribe, to administer funds allocated under subpart A of this part for use in nonentitlement areas of the State. After January 26, 1995, any State which elects to administer the allocation of CDBG funds for use in nonentitlement areas of the State in any year must, in addition to all other requirements of this subpart, submit a pledge by the State in accordance with section 108(d)(2) of the Act, and in a form acceptable to HUD, of any future CDBG grants it may receive under subpart A and this subpart. Such pledge shall be for the purpose of assuring repayment of any debt obligations (as defined in § 570.701), in accordance with their terms, that HUD may have guaranteed in the respective State on behalf of any nonentitlement public entity (as defined in § 570.701) or its designated public agency prior to the State's election.

[59 FR 66604, Dec. 27, 1994]

Subpart J—Grant Administration

SOURCE: 53 FR 8058, Mar. 11, 1988, unless otherwise noted.

§ 570.500 Definitions.

For the purposes of this subpart, the following terms shall apply:

(a) *Program income* means gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds, except as provided in paragraph (a)(4) of this section.

(1) Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with CDBG funds, less costs incidental to generation of the income;

(iv) Gross income from the use or rental of real property, owned by the recipient or by a subrecipient, that was constructed or improved with CDBG funds, less costs incidental to generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds, except as provided in paragraph (a)(3) of this section;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from sale of obligations secured by loans made with CDBG funds;

(viii) [Reserved]

(ix) Interest earned on program income pending its disposition; and

(x) Funds collected through special assessments made against properties owned and occupied by households *not* of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of a public improvement.

(2) Program income does not include income earned (except for interest described in § 570.513) on grant advances from the U.S. Treasury. The following items of income earned on grant advances must be remitted to HUD for transmittal to the U.S. Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

(i) Interest earned from the investment of the initial proceeds of a grant advance by the U.S. Treasury;

(ii) Interest earned on loans or other forms of assistance provided with CDBG funds that are used for activities

determined by HUD either to be ineligible or to fail to meet a national objective in accordance with the requirements of subpart C of this part, or that fail substantially to meet any other requirement of this part; and

(iii) Interest earned on the investment of amounts reimbursed to the CDBG program account prior to the use of the reimbursed funds for eligible purposes.

(3) The calculation of the amount of program income for the recipient's CDBG program as a whole (i.e., comprising activities carried out by a grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on CDBG-funded loans received from grantees if such payments are made using program income received by the subrecipient. (By making such payments, the subrecipient shall be deemed to have transferred program income to the grantee.) The amount of program income derived from this calculation shall be used for reporting purposes, for purposes of applying the requirement under § 570.504(b)(2)(iii), and in determining limitations on planning and administration and public services activities to be paid for with CDBG funds.

(4) Program income does not include:

(i) Any income received in a single program year by the recipient and all its subrecipients if the total amount of such income does not exceed \$25,000; and

(ii) Amounts generated by activities that are financed by a loan guaranteed under section 108 of the Act and meet one or more of the public benefit criteria specified at § 570.209(b)(2)(v) or are carried out in conjunction with a grant under section 108(q) in an area determined by HUD to meet the eligibility requirements for designation as an Urban Empowerment Zone pursuant to 24 CFR part 597, subpart B. Such exclusion shall not apply if CDBG funds are used to repay the guaranteed loan. When such a guaranteed loan is partially repaid with CDBG funds, the amount generated shall be prorated to reflect the percentage of CDBG funds used. Amounts generated by activities financed with loans guaranteed under section 108 which are not defined as program income shall be treated as

miscellaneous revenue and shall not be subject to any of the requirements of this part, except that the use of such funds shall be limited to activities that are located in a revitalization strategy area and implement a HUD approved area revitalization strategy pursuant to § 91.215(e) of this title. However, such treatment shall not affect the right of the Secretary to require the section 108 borrower to pledge such amounts as security for the guaranteed loan. The determination whether such amounts shall constitute program income shall be governed by the provisions of the contract required at § 570.705(b)(1).

(5) Examples of other receipts that are not considered program income are proceeds from fund raising activities carried out by subrecipients receiving CDBG assistance (the costs of fundraising are generally unallowable under the applicable OMB circulars referenced in 24 CFR 84.27), funds collected through special assessments used to recover the non-CDBG portion of a public improvement, and proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified in § 570.503(b)(8) for subrecipient-controlled property, or in § 570.505 for recipient-controlled property.

(b) *Revolving fund* means a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities. Each revolving loan fund's cash balance must be held in an interest-bearing account, and any interest paid on CDBG funds held in this account shall be considered interest earned on grant advances and must be remitted to HUD for transmittal to the U.S. Treasury no less frequently than annually. (Interest paid by borrowers on eligible loans made from the revolving loan fund shall be program income and treated accordingly.)

(c) *Subrecipient* means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under § 570.201(o), receiving

CDBG funds from the recipient or another subrecipient to undertake activities eligible for such assistance under subpart C of this part. The term excludes an entity receiving CDBG funds from the recipient under the authority of § 570.204, unless the grantee explicitly designates it as a subrecipient. The term includes a public agency designated by a unit of general local government to receive a loan guarantee under subpart M of this part, but does not include contractors providing supplies, equipment, construction, or services subject to the procurement requirements in 24 CFR 85.36 or 84.40, as applicable.

[53 FR 8058, Mar. 11, 1988, as amended at 57 FR 27120, June 17, 1992; 60 FR 1952, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56914, Nov. 9, 1995]

§ 570.501 Responsibility for grant administration.

(a) One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of the recipient to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.

(b) The recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the actions described in § 570.910. Where a unit of general local government is participating with, or as part of, an urban county, or as part of a metropolitan city, the recipient is responsible for applying to the unit of general local government the same requirements as are applicable to subrecipients, except that the five-year period identified under § 570.503(b)(8)(i) shall begin with the date that the unit of general local government is no longer considered by HUD to be a part of the metropolitan city or urban county, as applicable, instead of the date

that the subrecipient agreement expires.

[53 FR 8058, Mar. 11, 1988, as amended at 57 FR 27120, June 17, 1992]

§ 570.502 Applicability of uniform administrative requirements.

(a) Recipients and subrecipients that are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A-87, "Cost Principles for State, Local, and Indian Tribal Governments"; OMB Circular A-128, "Audits of State and Local Governments" (implemented at 24 CFR part 44); and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" or the related CDBG provision, as specified in this paragraph:

- (1) Section 85.3, "Definitions";
- (2) Section 85.6, "Exceptions";
- (3) Section 85.12, "Special grant or subgrant conditions for 'high-risk' grantees";
- (4) Section 85.20, "Standards for financial management systems," except paragraph (a);
- (5) Section 85.21, "Payment," except as modified by § 570.513;
- (6) Section 85.22, "Allowable costs";
- (7) Section 85.26, "Non-federal audits";
- (8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income;
- (9) Section 85.33, "Supplies";
- (10) Section 85.34, "Copyrights";
- (11) Section 85.35, "Subawards to debarred and suspended parties";
- (12) Section 85.36, "Procurement," except paragraph (a);
- (13) Section 85.37, "Subgrants";
- (14) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f);
- (15) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e);
- (16) Section 85.42, "Retention and access requirements for records," except that the period shall be four years;
- (17) Section 85.43, "Enforcement";
- (18) Section 85.44, "Termination for convenience";